Supreme Court, U.S.
FILED
JAN 7 2002
CLERK

(2)

No. 01-864

IN THE

Supreme Court of the United States

FERNANDO MARCELLA,

Petitioner,

v.

KEVIN MURPHY, alias JOHN DOE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF IN OPPOSITION

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REASON FOR DENYING THE WRIT

The sole issue presented by the *pro se* Petition is whether the trial court erred in its determination that the disposition of the criminal charges against petitioner was irrelevant to his claim for false arrest under 42 U.S.C. § 1983. Petitioner specifically asks this Court for writ to review whether:

> [i]n a civil rights police misconduct case, did the Court of Appeals err in not admitting into evidence the disposition of criminal charges against the petitioner in the civil rights case, who was the defendant in the criminal case, when both the criminal charges and the civil rights allegations arose from the same basic set of events.

Petition for a Writ of Certiorari to the Court of Appeals for the First Circuit, at i.

This issue raises a pure evidentiary question relating to whether such information is relevant to the underlying action. Rather than raising an important, unsettled question of federal law or resolving a conflict between the Circuits, this issue involves the application of well-settled evidentiary principles. The First Circuit properly applied the relevancy principles and correctly held that the disposition of the charge was inadmissible. Consequently, there is no compelling reason to grant the instant Petition for Writ of Certiorari and Respondent respectfully requests that this Honorable Court deny the Petition for Writ of Certiorari.

STATEMENT OF THE CASE

On or about October 6, 1999, petitioner filed a Complaint against Kevin Murphy, a police officer with the Town of Lincoln, Lincoln Police Chief William P. Strain, and the Town of Lincoln, Rhode Island. Petitioner specifically alleged, *inter alia*, that Officer Murphy violated petitioner's constitutional rights by falsely arresting petitioner on April 7, 1998. Petitioner further alleged that Officer Murphy used excessive force in arresting petitioner and subsequently failed to provide medical treatment for petitioner.[1] Petitioner likewise sought to recover against the Town of Lincoln and Chief William Strain under 42 U.S.C. § 1983.

On June 26 and 27, 2000, a jury trial was held in the U.S. District Court for the District of Rhode Island. At the close of petitioner's case, judgment as a matter of law was granted on behalf of the Town of Lincoln and Chief William Strain. Transcript (hereinafter "Tr."), at 153. On June 27, 2000, the jury returned a verdict in favor of Officer Murphy and judgment entered accordingly. On July 5, 2000, petitioner filed a motion for a new trial which was denied on July 17, 2000.

On July 26, 2000, petitioner filed an appeal to the First Circuit from the entry of judgment in favor of Officer Murphy.[2] On January 29, 2001, the First Circuit, in

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1. Petitioner had also originally brought a claim under Rhode Island Civil Rights statute, R.I.G.L. § 42-112-1, *et seq*. This claim, however, was voluntarily dismissed at the time of trial. Tr. at 101.

2. On appeal, petitioner did not challenge the entry of judgment as a matter of law on behalf of the Town of Lincoln and Chief William Strain.

accordance with F.R.A.P. Rule 34(a), took the appeal on the submission of the briefs without oral argument. Thereafter, on June 12, 2001, the First Circuit issued a *Per Curiam* decision affirming the judgment in favor of defendant Kevin Murphy.

STATEMENT OF THE FACTS

Viewing the evidence in the light most favorable to the jury's verdict, *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209 (1993); *Gil de Rebollo v. Miami Heat Associations, Inc.*, 137 F.3d 56, 63 (1st Cir. 1998), the evidence reveals that on April 7, 1998, Patrolman Kevin Murphy was on regular patrol driving north on Route 246 when he encountered a brown Lincoln Town car traveling directly in front of him. Tr. at 105 & 106. Officer Murphy noticed the vehicle because it started to slow down until it was traveling 10 mph. This caused the officer and the traffic behind him to likewise slow. *Id.* The driver of the vehicle then suddenly pulled sharply to the side of the road, stopping his vehicle with its back tires blocking the left lane and its front tires on the dirt along the side of the road. *Id.*

Believing that the driver either needed directions or was experiencing car problems, Officer Murphy stopped his own vehicle ten (10) to fifteen (15) feet behind the Lincoln. *Id.* Officer Murphy simultaneously activated his overhead, emergency lights as precautionary measure, to warn the traffic behind him that he was stopping and as a signal for other drivers to avoid the disabled vehicle. *Id.* After Officer Murphy radioed to the station that he was with a possible "disabled motor vehicle" (DMV), the driver of the Lincoln, the petitioner, got out of his car and stood in the middle of the road. *Id.* at 107. The petitioner looked directly at Officer

Murphy with a menaced and disturbed look. *Id.* Officer Murphy, still not sure why the petitioner stopped, began to approach petitioner, asking him what was wrong or if he could help him with anything. The petitioner started yelling, "You can't do anything to me!" *Id.*

At this point, Officer Murphy noticed that the inside of the driver's side door had been pulled apart and there were wires hanging out. *Id.* at 108. Due to petitioner's bizarre behavior and the condition of the car, Officer Murphy felt that petitioner did not want to be caught driving because he had either been drinking or because the car was stolen. *Id.* Officer Murphy then told petitioner to get back into his vehicle. Rather than comply with the officer's direction, petitioner, in an irrational manner, again yelled "You can't do anything to me!" and started walking towards the officer. *Id.* at 109. Officer Murphy repeated his order for petitioner to get back into his vehicle, but petitioner simply kept repeating his chant "You can't do anything to me!" and moving towards the officer. Raising his hands as he approached the officer, petitioner closed the gap between himself and the officer quickly. *Id.* Officer Murphy, his hand outstretched to keep the petitioner away from him, took a step back. Petitioner, however, was able to grab the officer's outstretched arm. Officer Murphy reacted instantly with a defensive move, grabbing petitioner's arm and attempting to place petitioner in a restraining bear hug. Officer Murphy still had no idea why petitioner was acting the way he was, so Officer Murphy kept repeating for petitioner to calm down. Petitioner, however, fought with the officer. The two (2) wrestled for several minutes. *Id.* When Officer Murphy attempted to put petitioner on the hood of the cruiser, the two fell to the ground and petitioner had the wind knocked out of him temporarily. *Id.* at 110. This enabled Officer Murphy to broadcast a call for help over his hand radio, attached to his lapel. *Id.*

Prior to receiving Officer Murphy's call, however, the Lincoln police department had received several 911 calls from neighbors and people passing by in their cars, describing the violent struggle by petitioner. *Id.* at 137-138. Lieutenant Riel, the officer in charge on that evening, accordingly had dispatched officers to assist Officer Murphy before receiving Officer Murphy's call. *Id.* While petitioner and Officer Murphy were struggling, petitioner continually yelled, "Police brutality!" After several futile commands for petitioner to calm down, Officer Murphy finally used his capstun (pepper gas) in an attempt to curtail petitioner's violent struggle. However, it did not have any effect on the petitioner, who seemed to be very enraged and agitated. *Id.* at 113.

When Lincoln Police Officers Philip Gould, William S. Strain and John McRoberts arrived, Officer Murphy was still struggling with petitioner. It subsequently took two (2) officers to restrain petitioner and place him in handcuffs. *Id.* at 113-114. Once the petitioner was handcuffed, he started kicking and spitting, and refused to be placed into the rear of the police cruiser. It subsequently took all four (4) Lincoln police officers and a State Trooper who had arrived, to place petitioner in the cruiser. *Id.* at 115. Petitioner was advised that he was being arrested. Once in the car, petitioner continued to scream and yell. *Id.*

Upon arriving at the police station, Lieutenant Riel spoke with petitioner while he was still in the police cruiser in an attempt to calm him down. *Id.* at 139. Due to his combative state, petitioner was immediately placed in the cell. *Id.* During this time frame, petitioner continued to scream, yell and threaten the officers. *Id.* at 142. When petitioner finally calmed down, Lieutenant Riel allowed the petitioner to come

out of the cell to make a phone call. *Id.* at 141-142. After making the call, petitioner refused to go back into his cell. *Id.* at 66 &142-143. Once again, the officers had to use force to place the petitioner back into his cell. *Id.* at 143.

At trial petitioner, in addition to admitting to having been diagnosed with paranoid schizophrenia, *Id.* at 53, confirmed that he had many encounters with the Lincoln police prior to April 7, 1998, and that he blamed the police department for many of his misfortunes, *Id.* at 50-58. Petitioner was specifically upset with the Lincoln Police department's handling of his complaint that his children had been "medically tampered" or cloned by the Bethesda Memorial Hospital. *Id.* at 53. According to petitioner, after promising to look into the allegation, the Lincoln police tricked him into being brought to the hospital. *Id.* at 54.

Petitioner also held the Lincoln police department responsible for his attempted suicide in 1993. *Id.* at 51. In 1993, Mrs. Marcella had contacted the Lincoln police to help stop petitioner from leaving for California. After speaking with petitioner and his wife, the officers took petitioner to the hospital for observation. Later that same day, after being released from the hospital, petitioner attempted to jump from the Route 295 overpass. *Id.* Petitioner alleged that his suicide attempt was in response to the police officers' attempt to get him help by bringing him to the hospital. *Id.* Petitioner also held the police department responsible for his subsequent admittance to Butler Hospital, a psychiatric hospital. Petitioner also informed the jury that he believed that the police department conspired with his daughter and hospital officials to gain control of his bank book. *Id.* at 51–52. Petitioner also held the police department responsible for ruining his relationship with his daughter.

In particular, petitioner maintained that the police department encouraged his daughter to falsely accuse him of inappropriately touching her. *Id.* at 56. His daughter no longer speaks to him. *Id.* at 57.

Therefore, as petitioner testified at trial, the police were present and involved, to some extent, in the various incidents in petitioner's life that either led to his hospitalization or amounted to his misfortune. Petitioner thus held the police department responsible for these incidents.

As a result of his actions on April 7, 1998, petitioner was charged with simple assault and resisting arrest. Prior to going to trial on these charges, however, petitioner agreed to have the resisting arrest charge filed for one (1) year on his plea of not-guilty pursuant to R.I.G.L. § 12-10-12 and the corresponding simple assault charge dismissed. Section 12-10-12 of Rhode Island General Laws provides an alternative to an offender facing a determination of guilt or innocence of the criminal charge. When a plea is entered pursuant to this section, the criminal charge is "filed" for one (1) year. During that time frame, the offender must continue to maintain the peace. The filing of a criminal complaint under R.I.G.L. § 12-10-12, however, only delays the disposition of the charges. As noted by the Rhode Island Supreme Court, "[t]he filing of a complaint [under § 12-10-12] is a disposition tool that, in appropriate cases, affords defendants the opportunity to make a new beginning without carrying forth the weight of a criminal record for the rest of their lives." *State v. Olink*, 507 A.2d 443, 446 (R.I. 1986). If an offender fails to maintain the peace, the criminal charge that has been previously filed will be resurrected and the suspect will proceed through the normal court process. In the instant case, petitioner successfully maintained the peace during the one (1) year time frame and the charge of resisting arrest was subsequently dismissed in accordance with R.I.G.L. § 12-10-12.

ARGUMENT

I. THE DISPOSITION OF THE CRIMINAL CHARGES WAS PROPERLY EXCLUDED

Petitioner seeks a writ to review the lower court's determination that the disposition of the criminal charges pursuant to R.I.G.L. § 12-10-12 was irrelevant to the § 1983 claim against Officer Murphy. This issue does not involve unsettled or unique questions of law. Rather, resolution of the instant issue hinges upon the application of well-settled evidentiary principles. Respondent submits that the trial court properly applied these evidentiary principles in deciding to exclude the disposition of the criminal charges. More precisely, the issue before the jury related to whether there was probable cause to arrest petitioner on April 7, 1998, and whether excessive force was used in effectuating this arrest. The ultimate disposition of the criminal charges brought against petitioner, especially one that did not resolve the guilt or innocence of petitioner, is irrelevant to these issues. In addition, the introduction of this disposition would have only served to mislead and confuse the jury. Consequently, the trial court did not abuse its discretion in refusing to admit such evidence at trial. *Faigin v. Kelly*, 184 F.3d 6, 79-80 (1st Cir. 1999).

A. Guilt or innocence of the criminal charges is irrelevant to whether there was probable cause to arrest petitioner

Petitioner seeks to recover against Officer Murphy for an alleged false arrest and use of excessive force in effectuating this arrest. Claiming that these actions amount

to a violation of petitioner's constitutional rights, petitioner thus alleges that he is entitled to damages pursuant to 42 U.S.C. § 1983. In order to maintain a claim for false arrest under § 1983,[3] petitioner must establish that the officers lacked probable cause to detain him. Subjective intentions play no role in ordinary, probable cause Fourth Amendment analysis. *Whren v. United States*, 517 U.S. 806, 116 S. Ct. 1769, 1774 (1996). Rather an objective test must be applied. The question is whether another officer standing in the shoes of these defendants and having the same information these defendants had, would reasonably have come to the conclusion that there was probable cause to arrest and detain the petitioners. *Floyd v. Farrell*, 765 F.2d 1, 5 (1st Cir. 1985) "Probable cause exists when facts and circumstances within the arresting officers knowledge and of which he has reasonably trustworthy information are sufficient to warrant a man of reasonable cause and prudence in the belief that the defendant is committing or has committed a crime." *Id.*

Thus, the guilt or innocence of the underlying charge is not relevant to the determination of whether the officer falsely arrested the individual. *See Moody v. McElroy*, 513 A.2d 5, 10 (R.I. 1986). *Cf. Meehan v. Town of Plymouth*, 167 F.3d 85 (1st Cir. 1999) *(summary judgment in favor of officers appropriate even where state criminal conviction overturned on appeal).*

Rather, the liability of the officer is resolved by a determination of whether the information in the officer's possession at the time of the arrest would lead a reasonable

3. Petitioner also brought a state law claim for false arrest and assault and battery. At trial, counsel agreed to submit the case to the jury on the § 1983 claims alone in that the state law claims were essentially subsumed under the umbrella of the § 1983 claim. Tr. at 101.

officer to believe that a crime had been committed and the petitioner committed the crime. Petitioner's plea arrangement after the fact is not relevant to this determination. Thus, the trial court did not abuse its discretion by excluding the disposition of the criminal charges from the instant case.

In support of his petition for writ of certiorari, petitioner nevertheless argues that the disposition of the criminal charges against petitioner was relevant in that it bore on the bias and credibility of the witnesses. Petitioner further maintains that without such information the jury was denied information "about one of the central aspects of the whole confrontation between the parties." Appellant's Petition, at 9.

It is difficult in the first instance to discern how this plea agreement bears on the bias or motive of Officer Murphy. There has been no evidence proffered to demonstrate that Officer Murphy was involved in the decision to accept the not-guilty filing or to dismiss the remaining charge. Petitioner thus appears to be arguing that the disposition bore on petitioner's own credibility. However, petitioner's argument is based on the faulty presumption that the disposition pursuant to § 12-10-12 is an exoneration of the charges against petitioner. Rather than exonerate petitioner, this disposition simply amounts to no finding of petitioner's guilt or innocence.

As noted, the evidence petitioner sought to introduce was the Rhode Island Attorney General's dismissal of the simple assault charge and the not-guilty filing of the resisting arrest charge for one (1) year pursuant to R.I.G.L. § 12-10-12. Section 12-10-12 of Rhode Island General Laws provides an alternative to an offender facing a determination of guilt

or innocence of the criminal charge. In pertinent part, § 12-10-12 states:

> Any judge of the district court or superior court may place on file any complaint in a criminal case. . . . It shall be an express condition of any filing in accordance with this section that the defendant shall at all times during said one year keep the peace and be of good behavior. *A violation of that express condition or any other condition set by the court shall be deemed a violation of the filing and the matter which was filed may be resurrected by the court.* . . . In the event the court filed the complaint under this section while the defendant maintained a plea of not guilty, if the court finds there to have been a violation, *it may proceed to the further disposition of the complaint according to law.* If no action is taken on the complaint for a period of one year following the filing, the complaint shall be automatically quashed and destroyed. (Emphasis added).

Thus, as evident from the face of the statute, the filing of a criminal complaint under this section is only a delay in the disposition of the charges. As noted by the Rhode Island Supreme Court, "[t]he filing of a complaint [under § 12-10-12] is a disposition tool that, in appropriate cases, affords defendants the opportunity to make a new beginning without carrying forth the weight of a criminal record for the rest of their lives." *State v. Olink*, 507 A.2d 443, 446 (R.I. 1986). It is only if the petitioner meets the condition of maintaining the peace that the charge will be dismissed. However, if petitioner fails to maintain the peace, the criminal charge that has been previously filed will be resurrected and the suspect will proceed through the normal court process.

In the instant case, it was only because petitioner stayed out of trouble for one (1) year that the criminal charge of resisting arrest was accordingly dismissed at the end of that year period. Consequently, introduction of this plea has no bearing on the credibility of petitioner or of the correctness of the charge against petitioner. Rather, it was simply a means for him to safely dispose of the criminal charge without the burden of a criminal conviction or a finding of guilt. The trial court thus correctly ruled that this evidence was irrelevant to the claims before the jury and did not abuse its discretion in excluding the same.

B. The introduction of this evidence would have only served to mislead and confuse the jury and thus was properly excluded

Evidence of the disposition of the criminal charges was also properly excluded in light of the potential for it to confuse and mislead the jury. The First Circuit has specifically recognized the dangers of a lay jury misinterpreting judicial actions. *Faigin*, 184 F.3d at 80. "[C]ourts, recognizing the attendant danger of jury confusion and unfair prejudice, frequently have approved the exclusion of judicial findings, convictions, and similar evidence on Rule 403 grounds." *Id. citing Gil-De-Rebollo v. Miami Heat Associations, Inc.*, 137 F.3d 56, 64 (1st Cir. 1998) *(upholding decision to exclude evidence of a criminal misdemeanor conviction in a related civil trial)*; *Nipper v. Snipes*, 7 F.3d 415, 418 (4th Cir. 1993) *(upholding exclusion of court order in related civil case)*; *cf. Williams v. Drake*, 146 F.3d 44, 47 (1st Cir. 1998) *(affirming, in a related civil suit, exclusion of guilty plea previously entered by petitioner before prison disciplinary board)*.

Under Fed. R. Evid. 403, the trial justice must balance probative worth against unfair prejudicial effect. In this case, petitioner alleges that the disposition of the criminal charges is probative of the party's credibility and bias. As more fully outlined above, this position is questionable. Nevertheless, even if it can be said that the disposition does have some bearing on the credibility of the parties, the prejudicial effect clearly outweighs any limited probative value petitioner assigns to the testimony. More specifically, by introducing this disposition, the jury may be led to believe that petitioner was actually exonerated of the charges. As previously discussed, petitioner's plea did not result in the determination of his guilt or innocence. The jury could nevertheless come to this conclusion and assign undue weight to this plea agreement. The jury could also be confused into believing that the dismissal of the criminal charge meant that there was no probable cause to arrest petitioner. The trial court thus did not abuse its discretion in excluding the evidence relating to the disposition of the criminal charges and the Petition for Writ of Certiorari to review the same should accordingly be denied.

III. THE EXCLUSION OF THE EVIDENCE WAS NEVERTHELESS HARMLESS

Even if this Court were to conclude that the trial court erred in excluding the proffered evidence, the exclusion of the same amounts to harmless error. The harmless error "inquiry is whether exclusion or admission of the evidence affected petitioner's substantial rights. The central question is whether this court can say with fair assurance that the judgment was not substantially swayed by the error." *Rubert-Torres v. Hospital San Pablo, Inc.*, 205 F.3d 472, 480 (1st Cir. 2000) (citations omitted). Stated another way, the essential inquiry in harmless error review is whether the proffered evidence was likely to affect the outcome of trial. *United States v. Torres-Galindo*, 206 F.3d 136, 141 (1st Cir. 2000).

In the instant case, even if the jury were informed of the disposition of the criminal charges, it would not have affected the outcome of the trial. Rather, as conceded by petitioner on appeal, this case essentially hinged upon whose version of events the jury believed. As previously noted, the disposition of the charges does not reflect an exoneration of the charges and thus does not impact either party's credibility.

In any event, petitioner's own credibility was severely tainted both by petitioner's own testimony as well as his own witnesses. In the first instance, petitioner's admission to have been diagnosed as a paranoid schizophrenic who did not take his medication provided the jury with a basis to suspect the accuracy of petitioner's recollection of events. Tr. at 52- 53. In conjunction with this psychological illness, petitioner's credibility was further tainted by petitioner's testimony that he holds the Lincoln police department responsible for his various hospitalizations over the years, his attempted suicide as well as a conspiracy with his daughter and hospital officials to gain control of his assets. *Id.* at 50-58.

Petitioner's exaggeration of the injuries he received that night further provides a basis for the jury to reject petitioner's testimony. In particular, petitioner claimed that not only was he kicked and punched by Officer Murphy during their struggle but that his face was pushed into the ground so hard, it caused him to lose consciousness three (3) times. *Id.* at 35-36, 64. The mug shot introduced into evidence, however, failed to demonstrate injuries to petitioner consistent with this testimony. *See* Exhibit A. In addition, petitioner claimed that he was thrown in the cell causing him to slam his head into the cell wall. Petitioner alleged that as a result of this fall, he suffered headaches for two (2) months. Tr. at 40-41, 64. In addition to the fact that the hospital records

failed to identify a bruise, cut or other laceration to petitioner's head reflecting this injury, *see* Exhibit 19, petitioner received no medical attention in the months after the incident to support the claimed injury to his head.

Petitioner's own doctor also cast a shadow over petitioner's credibility. Dr. Bellucci, who treated petitioner for a corneal abrasion, testified that the abrasion, which was consistent with a form of struggle described by Officer Murphy, *Id.* at 97, healed in four (4) days, *Id.* at 90. Nevertheless, petitioner inexplicitly claimed a severe loss of eye-sight. *Id.* at 45 & 46. Dr. Bellucci accordingly sent petitioner to three (3) experts. *Id.* at 82, 83, & 85. None of the experts could find a basis for petitioner's claimed loss of vision. Two (2) doctors went as far as to note that petitioner appeared to be "malingering." *Id.* at 83, 86, 87. According to Dr. Bellucci, this meant that the specialists thought petitioner was faking. *Id.* at 94. Dr. Bellucci himself, as well as the specialists, did not believe petitioner was telling the truth in his reports of the lingering effects of the injury. *Id.* at 92, 97.

All of these factors provide ample justification for the jury to have rejected petitioner's testimony. As such, it cannot be said "with fair assurance" that the judgment would have been substantially swayed by the admission of the disposition of the criminal charges. Consequently, even if it is determined that the trial court abused its discretion in excluding the evidence, such an exclusion was harmless.

CONCLUSION

For the reasons cited herein, Respondent respectfully requests that this Honorable Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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